Transportation Unlimited, Inc. *and* Teamsters Local 327, International Brotherhood of Teamsters, AFL–CIO, Petitioner. Case 26–RC–7562

November 10, 1993

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's Supplemental Decision and Certification of Representative (pertinent portions are attached), as well as the Petitioner's opposition brief. The request for review is denied as it raises no substantial issues warranting review.[1]

[1] The Employer requested review, among other things, of the Regional Director's determination that an error in the ''sample ballot'' on the Notice of Election, which was corrected prior to the election, did not constitute objectionable conduct. Only the portion of the Regional Director's Supplemental Decision relating to that objection is attached.

APPENDIX

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Objection 1

By this objection, the Employer contends that the notice of Election initially provided by the Board for posting at the Employer's place of business contained an error, to wit, that the name of QAT, Inc. was included on the sample ballot contained in the notice along with the name of the Employer, and that this error is sufficient to overturn the results of the election, despite the fact that a corrected notice was provided and posted for approximately 40 hours prior to the start of the election.

The Petition herein as filed named the Employer and QAT, Inc. as joint employers, and the issue of the joint employer relationship was litigated at the representation hearing. The Decision and Direction of Election found no joint employer relationship and that the Employer employed the unit employees. Thus the Employer's contention that the relationship between it and QAT, Inc., was an important issue during the campaign is not in dispute. However, the Employer's emphasis on its contention that the Petitioner engaged in ''misrepresentation'' by maintaining its position on the joint employer issue in its communications with employees after the Decision and Direction of Election issues is misplaced. The Petitioner filed a Request for Review of the Decision and Direction of Election on the joint employer issue, which Request was not denied until September 10, 1993. Petitioner cannot be said to have engaged in ''misrepresentation'' simply because it maintained its legal position on the joint employer issue pending a final decision by the Board.

The Board's Rule 102.30 provides that notices of Election be posted for 72 hours prior to the election. The notices not only announce the time and place of the election and describe the group of employees who will participate in the election, but also set forth information about employees' rights and the parties' conduct in an election situation. In addition, a sample ballot is shown on the notice. In the instant situation, the only error on the initial, erroneous notice was the inclusion of QAT, Inc., along with the Employer herein on the sample ballot.[2] The description of the employees who would be voting in the election was correctly described at the center top of the notice as being the employees of the Employer.

Upon discovery of the error on the notices, the Board provided corrected notices at approximately 2:30 p.m. on Friday, September 10, 1993.[3] The election was scheduled to take place, and did take place, during the hours of 6 a.m. to 6 p.m. on Sunday, September 12, 1993. The correct notices were thus posted for nearly 40 hours in advance of the start of the election.

The Employer's operation is a 24-hour-a-day, 7-day-a-week operation. Its employees drive trucks to various parts of the United States, returning to the Employer's facility at various hours of the day or night. The Employer had attempted to schedule its employees' runs so that they would all return to its facility in time to have the opportunity to cast ballots on September 12, 1993. There is no evidence as to how many employees were on the road and how many had returned to the Employer's facility during the 3 days preceding the election.

The Board has held in numerous cases that it requires more than mere speculative harm to overturn an election. *Nightingale Oil Co*., 295 NLRB 1005 (1989), enfd. 905 F.2d 528, 531 (1990); *Jowa Security Services*, 269 NLRB 297 (1984). Errors in election notices have been evaluated in the past by the Board. In *Bokum Resources Corp*., 245 NLRB 681 (1979), enfd. 655 F.2d 1021 (10th Cir. 1981), the initial notices of Election made no mention of the time and place of the election, nor of the labor organizations involved. A corrected notice was posted for only 12 hours prior to the election, but the Board did not set the election aside. The error in the instant case was far less significant, and far less likely to affect the outcome of the election. The group of employees eligible to vote was correctly described; the time, place, and labor organizations involved were all correctly set forth; and employees' rights and parties' permissible conduct were included. The inclusion of one incorrect, but extraneous item, the name of QAT, Inc. was not nearly so serious as the errors in *Bokum*. As the unit of employees was correctly described at the top center of the notice as consisting of ''employees of Transportation Unlimited, Inc.,'' it is unlikely that the error on the sample ballot would cause much, if any, confusion among the voters, contrary to the Employer's contention. In addition, the corrected notices were posted for a longer period of time in the instant case than were the corrected notices in *Bokum.*

Similarly, in *Jumbo Produce*, 294 NLRB 998, 1009 (1989), the Board declined to set an election aside where the English-language versions of the notice were not posted at all until the day of the election. One factor relied upon by the Board in that case to support its conclusion that the late post-

[2] A copy of the initial notice center panel is attached as Exh. B.

[3] A copy of the corrected notice center panel is attached as Exh. C.

ing of the notice did not have an appreciable effect was the high turnout of employees at the election, several more than the number of employees on the eligibility list. In the instant case, where 83 of 85 eligible employees voted in the election, it would be impossible to conclude that the error on the initial notices had any perceptible effect on the election.

Likewise, in *Affiliated Midwest Hospital*, 266 NLRB 1199 (1983), enfd. 789 F.2d 524 (7th Cir. 1986), the Board, with circuit court approval, declined to set aside an election because, inter alia, the notices of Election contained errors in the unit description. These errors were never corrected in advance of the election.

The cases relied upon by the Employer in support of its objection are inapposite. In *Thermalloy Corp*., 223 NLRB 428 (1977), Spanish-speaking employees were read a copy of the notice, and were unable to read it at all until the day of the election. In *Kilgore Corp*., 203 NLRB 108 (1973), the entire notice was posted only the day before the election. In both decisions, the Board stressed the importance of the employees' opportunity to review the notice information concerning their protected rights and the permissible conduct of the parties. Here, all the information contained on the corrected notice of Election was posted for the entire 72-hour period prior to the election. The only change made from the initial notice to the corrected notice was the deletion of ''QAT, Inc.'' The rest of the information was available to employees for the entire notice-posting period and remained the same from one version of the notice to the next. Therefore, the notice's important purposes of informing employees of their rights and warning unions and management against conduct which would impede the election was accomplished even by the initial notice. In addition, the correct notices were posted in the instant situation for greater periods of time than was true in *Thermalloy* and *Kilgore*. Also distinguished are *Certain-Teed*, 49 NLRB 360 (1943), and *Douglas Aircraft*, 51 NLRB 161 (1943), as each deals with misidentification of a labor organization.

For all the foregoing reasons, I find Objection 1 to be without merit. Accordingly, Employer's Objection 1 is overruled.